

§ 656.30

20 CFR Ch. V (4–1–14 Edition)

CFR part 18, apply to hearings under this paragraph (e).

(ii) For the purposes of this paragraph (e)(2), references in 29 CFR part 18 to: “administrative law judge” mean the Board of Alien Labor Certification Appeals member or the Board of Alien Labor Certification Appeals panel duly designated under § 656.27(a); “Office of Administrative Law Judges” means the Board of Alien Labor Certification Appeals; and “Chief Administrative Law Judge” means the Chief Administrative Law Judge in that official’s function of chairing the Board of Alien Labor Certification Appeals.

§ 656.30 Validity of and invalidation of labor certifications.

(a) *Priority date.* (1) The filing date for a Schedule A occupation or sheepherders is the date the application was dated by the Immigration Officer.

(2) The filing date, established under § 656.17(c), of an approved labor certification may be used as a priority date by the Department of Homeland Security and the Department of State, as appropriate.

(b) *Expiration of labor certifications.* For certifications resulting from applications filed under this part and 20 CFR part 656 in effect prior to March 28, 2005, the following applies:

(1) An approved permanent labor certification granted on or after July 16, 2007 expires if not filed in support of a Form I-140 petition with the Department of Homeland Security within 180 calendar days of the date the Department of Labor granted the certification.

(2) An approved permanent labor certification granted before July 16, 2007 expires if not filed in support of a Form I-140 petition with the Department of Homeland Security within 180 calendar days of July 16, 2007.

(c) *Scope of validity.* For certifications resulting from applications filed under this part or 20 CFR part 656 in effect prior to March 28, 2005, the following applies:

(1) A permanent labor certification for a Schedule A occupation or sheepherders is valid only for the occupation set forth on the *Application for Alien Employment Certification* (Form ETA 750) or the *Application for Permanent*

Employment Certification (Form ETA 9089) and only for the alien named on the original application, unless a substitution was approved prior to July 16, 2007. The certification is valid throughout the United States unless the certification contains a geographic limitation.

(2) A permanent labor certification involving a specific job offer is valid only for the particular job opportunity, the alien named on the original application (unless a substitution was approved prior to July 16, 2007), and the area of intended employment stated on the *Application for Alien Employment Certification* (Form ETA 750) or the *Application for Permanent Employment Certification* (Form ETA 9089).

(d) *Invalidation of labor certifications.* After issuance, a labor certification may be revoked by ETA using the procedures described in § 656.32. Additionally, after issuance, a labor certification is subject to invalidation by the DHS or by a Consul of the Department of State upon a determination, made in accordance with those agencies’ procedures or by a court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to the CO or to the Chief, Division of Foreign Labor Certification, the CO, or the Chief of the Division of Foreign Labor Certification, as appropriate, shall notify in writing the DHS or Department of State, as appropriate. A copy of the notification must be sent to the regional or national office, as appropriate, of the Department of Labor’s Office of Inspector General.

(e) *Duplicate labor certifications.* (1) The Certifying Officer shall issue a duplicate labor certification at the written request of a Consular or Immigration Officer. The Certifying Officer shall issue such duplicate labor certifications only to the Consular or Immigration Officer who initiated the request.

(2) The Certifying Officer shall issue a duplicate labor certification to a Consular or Immigration Officer at the written request of an alien, employer, or an alien’s or employer’s attorney/agent. Such request for a duplicate labor certification must be addressed

to the Certifying Officer who issued the labor certification; must include documentary evidence from a Consular or Immigration Officer that a visa application or visa petition, as appropriate, has been filed; and must include a Consular Office or DHS tracking number.

(3) A duplicate labor certification shall be issued by the Certifying Officer with the same filing and expiration dates, as described in paragraphs (a) and (b) of this section, as the original approved labor certification.

[69 FR 77386, Dec. 27, 2004, as amended at 72 FR 27946, May 17, 2007]

§ 656.31 Labor certification applications involving fraud, willful misrepresentation, or violations of this part.

The following provisions apply to applications filed under both this part and 20 CFR part 656 in effect prior to March 28, 2005, and to any certifications resulting from those applications.

(a) *Denial.* A Certifying Officer may deny any application for permanent labor certification if the officer finds the application contains false statements, is fraudulent, or was otherwise submitted in violation of the Department's permanent labor certification regulations.

(b) *Possible fraud or willful misrepresentation.* (1) If the Department learns an employer, attorney, or agent is involved in possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department will refer the matter to the Department of Justice, Department of Homeland Security, or other government entity, as appropriate, for investigation, and send a copy of the referral to the Department of Labor's Office of Inspector General (OIG). In these cases, or if the Department learns an employer, attorney, or agent is under investigation by the Department of Justice, Department of Homeland Security, or other government entity for possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department may suspend processing of any permanent labor certification application involving such employer, attorney, or agent until com-

pletion of any investigation and/or judicial proceedings. Unless the investigatory agency, in writing, requests the Department to do otherwise, the Department shall provide written notification to the employer of the suspension in processing.

(2) A suspension pursuant to paragraph (b)(1) of this section may last initially for up to 180 days. No later than 180 days after the suspension began, if no criminal indictment or information has been issued, or judicial proceedings have not been concluded, the National Certifying Officer may resume processing some or all of the applications, or may extend the suspension in processing until completion of any investigation and/or judicial proceedings.

(c) *Criminal indictment or information.* If the Department learns that an employer, attorney, or agent is named in a criminal indictment or information in connection with the permanent labor certification program, the processing of applications related to that employer, attorney, or agent may be suspended until the judicial process is completed. Unless the investigatory or prosecutorial agency, in writing, requests the Department to do otherwise, the Department shall provide written notification to the employer of the suspension in processing.

(d) *No finding of fraud or willful misrepresentation.* If an employer, attorney, or agent is acquitted of fraud or willful misrepresentation charges, or if such criminal charges are withdrawn or otherwise fail to result in a finding of fraud or willful misrepresentation, the Certifying Officer shall decide each pending permanent labor certification application related to that employer, attorney, or agent on the merits of the application.

(e) *Finding of fraud or willful misrepresentation.* If an employer, attorney, or agent is found to have committed fraud or willful misrepresentation involving the permanent labor certification program, whether by a court, the Department of State or DHS, as referenced in § 656.30(d), or through other proceedings:

(1) Any suspension of processing of pending applications related to that